



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUL 14 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Melanie Sloan, Executive Director
Citizens for Responsibility and Ethics in Washington
1400 Eye Street, Northwest
Suite 450
Washington, DC 20005

RE: MUR 6140

Rep. Robert E. Andrews
Andrews for Congress Committee, and
Maureen Doherty, in her official capacity
as treasurer
Rep. Loretta Sanchez
Committee to Re-Elect Loretta Sanchez, and
Kinde Durkee, in her official capacity as
treasurer
Bill Dew
Bill Dew for Congress, and Mike McCauley,
in his official capacity as treasurer
William James Breazeale
Breazeale for Congress, and Kenneth Ray
Pervine, in his official capacity as treasurer
Andrew MacPherson
Barr 2008 Presidential Committee, and
David Chastain, in his official capacity as
treasurer

Dear Ms. Sloan:

This is in reference to the complaint you filed with the Federal Election Commission on December 2, 2008, concerning Rep. Robert E. Andrews, the Andrews for Congress Committee, and Maureen Doherty, in her official capacity as treasurer;¹ Rep. Loretta Sanchez, the Committee

¹ The Andrews Committee was incorrectly captioned and referred to in the complaint as Rob Andrews U. S. House Committee.

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to Re-Elect Loretta Sanchez, and Kinde Durkee, in her official capacity as treasurer; Bill Dew, Bill Dew for Congress, and Mike McCauley, in his official capacity as treasurer; William James Breazeale, Breazeale for Congress, and Kenneth Ray Pervine, in his official capacity as treasurer; and Andrew MacPherson, the Barr 2008 Presidential Committee, and David Chastain, in his official capacity as treasurer. After considering the circumstances of this matter, the Commission determined to dismiss this matter and closed the file as to the respondents, on July 2, 2009. At the same time, the Commission cautioned them that they appear to have violated 2 U.S.C. § 439a(b) and to take steps to ensure that this activity does not occur in the future.

Additionally, the Commission found no reason to believe that Mr. MacPherson and the Barr Committee violated 2 U.S.C. § 439a(b), and closed the file. The Factual and Legal Analyses explaining the Commission's decisions are enclosed.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003).

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

If you have any questions, please contact me at (202) 694-1650.

Sincerely,

Thomasenia P. Duncan
General Counsel



BY: Susan L. Lebeaux
Assistant General Counsel

Enclosures
Factual and Legal Analyses

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Rep. Robert E. Andrews
Andrews for Congress Committee, and
Maureen Doherty, in her official capacity
as treasurer

MUR: 6140

I. INTRODUCTION

This matter was generated by a complaint filed with the Federal Election Commission ("Commission") by Citizens for Responsibility and Ethics in Washington. See 2 U.S.C. § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint alleging that Rep. Robert E. Andrews, and the Andrews for Congress Committee, and Maureen Doherty, in her official capacity as treasurer ("Andrews Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g).

II. DISCUSSION

The complaint alleges that on June 11, 2007, the Andrews Committee spent \$952.04 for clothing items at Benjamin Peters, Bon-Ton, and Target for Rep. Andrews' personal use, as reflected in its 2007 Amended July Quarterly Report filed on April 12, 2008.

In its response, the Andrews Committee states that Rep. Andrews purchased the clothing because when he travelled on the morning of June 9, 2007, to give a keynote speech that evening at Cornell University, the airline lost his luggage. The response further states that Rep. Andrews paid for the clothes using a personal credit card "primarily used for campaign-related expenditures and trips, but Mr. Andrews is personally and solely responsible for all expenditures on the card." Response at 1. The response attaches a copy of the check drawn on the Andrews Committee's bank account that was used to pay for the credit card charges, including the clothing

1 purchases. The response states, and attached documents show, that on July 20, 2007, the airline
2 reimbursed Rep. Andrews, and he endorsed the check over to the Andrews Committee, which
3 deposited it into the Committee's account. The Andrews Committee treasurer, who filed the
4 response, states she contacted RAD by telephone about reporting this series of events and
5 thereafter filed a Form 99 (Miscellaneous Report) on October 12, 2007. The Andrews
6 Committee also reported the candidate's repayment on its 2007 October Quarterly Report filed
7 the same day.

8 2 U.S.C. § 439a(b)(1) states, "A contribution or donation described in sub-section (a)
9 shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution
10 accepted by a candidate, and any other donation received by an individual as support for
11 activities of the individual as a holder of Federal office" The statute further states in sub-
12 section (b)(2) that "a contribution or donation shall be considered to be converted to personal use
13 if the contribution or amount is used to fulfill any commitment, obligation, or expense of a
14 person that would exist irrespective of the candidate's election campaign or individual's duties as
15 a holder of Federal office, including . . . (B) a clothing purchase" See also 11 C.F.R.
16 § 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de*
17 *minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign
18 slogans, constitutes personal use).

19 Rep. Andrews used campaign funds from his authorized committee for clothing
20 purchases, which were of more than *de minimis* value, in violation of the prohibition on personal
21 use of campaign funds. 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). Despite the violations, Rep.
22 Andrews reimbursed the Andrews Committee before the complaint was filed. Moreover, the
23 alleged amount in violation is so low that it would not merit the further use of Commission

1 resources to pursue this matter. *See* Statement of Policy Regarding Commission Action in
2 Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545-6 (Mar. 16,
3 2007).

4 Therefore, the Commission has exercised its prosecutorial discretion and decided to
5 dismiss the complaint and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

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1 **FEDERAL ELECTION COMMISSION**

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3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Rep. Loretta Sanchez **MUR: 6140**
6 Committee to Re-Elect Loretta Sanchez, and
7 Kinde Durkee, in her official capacity
8 as treasurer
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by Citizens for Responsibility and Ethics in Washington. See 2 U.S.C.
13 § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint alleging
14 that Rep. Loretta Sanchez, and the Committee to Re-Elect Loretta Sanchez, and Kinde Durkee, in
15 her official capacity as treasurer ("Sanchez Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and
16 11 C.F.R. § 113.1(g).

17 **II. DISCUSSION**

18 The complaint alleges that on August 30, 2007, the Sanchez Committee spent \$145.12 for
19 clothing items at Lua Dao for Rep. Sanchez's personal use, and on November 20, 2007, the
20 Sanchez Committee reimbursed Rep. Sanchez \$188.97 for "meeting clothing," as reflected in its
21 2007 Year End Report filed on July 11, 2008.

22 The Sanchez Committee responded that only \$145.12 was for clothing, and was a part of
23 the \$188.97 reimbursement listed in the Report; the \$145.12 appears on a separate memo entry
24 identifying the portion of the reimbursement used for clothing (another memo item directly
25 following the Lua Dao entry appears to be for expenses constituting most of the remainder of the
26 total reimbursement). The Sanchez Committee states that the clothing purchases were for two
27 traditional Vietnamese dresses used for Rep. Sanchez's official appearances as a Member of

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1 Congress and for campaign events. The Sanchez Committee's response further states that Rep.
2 Sanchez has one of the largest constituencies of Vietnamese-Americans in the country, and that it
3 would have been "inappropriate," "disrespectful[,] and culturally insensitive" to attend these
4 events in non-traditional/non-Vietnamese dress. Response at 2. The Sanchez Committee
5 contends that as Rep. Sanchez would not have bought the dresses to attend the events irrespective
6 of her duties as a Member of Congress and a candidate for federal office, the reimbursement was
7 legal. Nevertheless, Rep. Sanchez returned the amount to her committee in an effort to "avoid
8 incurring any further costs and expenses" over such a "small" amount. *Id.* at 3.

9 2 U.S.C. § 439a(b)(1) states, "A contribution or donation described in sub-section (a)
10 shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution
11 accepted by a candidate, and any other donation received by an individual as support for
12 activities of the individual as a holder of Federal office" The statute further states in sub-
13 section (b)(2) that "a contribution or donation shall be considered to be converted to personal use
14 if the contribution or amount is used to fulfill any commitment, obligation, or expense of a
15 person that would exist irrespective of the candidate's election campaign or individual's duties as
16 a holder of Federal office, including . . . (B) a clothing purchase" *See also* 11 C.F.R.
17 § 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de*
18 *minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign
19 slogans, constitutes personal use).

20 Moreover, the Explanation and Justification for the regulation states that all but a *de*
21 *minimis* amount spent on clothing is *per se* personal use, and specifically supersedes Advisory
22 Opinion 1985-22 (Clay), which could be read to allow "specialized attire" to be worn at both
23 social and politically-related functions. Personal Use of Campaign Funds, 60 Fed. Reg. 7861,

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1 7864-5 (Feb. 9, 1995). Therefore, the response from the Sanchez Committee indicating that the
2 clothing purchases would exist "irrespective" of Sanchez's election campaign or duties as a
3 holder of Federal office do not provide a valid defense under the circumstances presented. See
4 2 U.S.C. § 439a(b) and 11 C.F.R. § 113.1(g).¹

5 Rep. Sanchez used campaign funds from her authorized committee for clothing
6 purchases, which were of more than *de minimis* value, in violation of the prohibition on personal
7 use of campaign funds. 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). However, Rep. Sanchez
8 reimbursed the Sanchez Committee upon learning of the alleged violations. Moreover, the
9 alleged amount in violation is so low that it would not merit the further use of Commission
10 resources to pursue this matter. See Statement of Policy Regarding Commission Action in
11 Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545-6 (Mar. 16,
12 2007).

13 Therefore, the Commission has exercised its prosecutorial discretion and decided to
14 dismiss the complaint and close the file. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

¹ The Sanchez Committee maintains that under 11 C.F.R. § 113.1(g)(1)(i)(C), an "irrebuttable presumption" seems to be established that clothing can never meet the "irrespective test," and therefore the regulation "exceeds the scope of the statute." However, this argument is incorrect as the regulation provides a *de minimis* exception for items such as campaign t-shirts and caps with campaign slogans.

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS: Bill Dew**

MUR: 6140

6 Bill Dew for Congress, and
7 Mike McCauley, in his official capacity
8 as treasurer
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by Citizens for Responsibility and Ethics in Washington. See 2 U.S.C.
13 § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint alleging
14 that Bill Dew, Bill Dew for Congress, and Mike McCauley, in his official capacity as treasurer
15 ("Dew Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g).

16 **II. DISCUSSION**

17 The complaint alleges that on August 25 and September 2, 2008, the Dew Committee
18 spent a total of \$1,089.16 for clothing items at The Men's Wearhouse for the candidate's
19 personal use, as reflected in its 2008 October Quarterly Report filed on October 15, 2008.

20 In its response, the Dew Committee states that after reviewing the issue with the
21 candidate, although the "clothing purchase was a necessary campaign expenditure and for a
22 specific campaign event," the expenditure violated the Act. It further states that Mr. Dew
23 refunded the amount to the campaign and that it would be reflected in a future filing. The Dew
24 Committee's 2009 April Quarterly Report discloses the refund as made on January 20, 2009.

25 2 U.S.C. § 439a(b)(1) states, "A contribution or donation described in sub-section (a)
26 shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution
27 accepted by a candidate, and any other donation received by an individual as support for

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1 activities of the individual as a holder of Federal office" The statute further states in sub-
2 section (b)(2) that "a contribution or donation shall be considered to be converted to personal use
3 if the contribution or amount is used to fulfill any commitment, obligation, or expense of a
4 person that would exist irrespective of the candidate's election campaign or individual's duties as
5 a holder of Federal office, including . . . (B) a clothing purchase" *See also* 11 C.F.R.
6 § 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de*
7 *minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign
8 slogans, constitutes personal use).

9 Mr. Dew used campaign funds from his authorized committee for clothing purchases,
10 which were of more than *de minimis* value, in violation of the prohibition on personal use of
11 campaign funds. 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). However, Mr. Dew reimbursed the
12 Dew Committee upon learning of the alleged violations. Moreover, the alleged amount in
13 violation is so low that it would not merit the further use of Commission resources to pursue this
14 matter. *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in
15 the Enforcement Process, 72 Fed. Reg. 12545, 12545-6 (Mar. 16, 2007).

16 Therefore, the Commission has exercised its prosecutorial discretion and decided to
17 dismiss the complaint and close the file. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** William James Breazeale **MUR: 6140**
6 Breazeale for Congress, and
7 Kenneth Ray Pervine, in his official capacity
8 as treasurer
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by Citizens for Responsibility and Ethics in Washington. *See* 2 U.S.C.
13 § 437g(a)(1). For the reasons set forth below, the Commission dismissed the complaint alleging
14 that William James Breazeale, and Breazeale for Congress, and Kenneth Ray Pervine, in his
15 official capacity as treasurer ("Breazeale Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and
16 11 C.F.R. § 113.1(g).

17 **II. DISCUSSION**

18 The complaint alleges that on October 4, 2007, the Breazeale Committee spent \$1,000 for
19 "clothes for campaign events" at Fisher's Men's Store for the candidate's personal use, as
20 reflected in its 2007 Amended Year End Report filed on April 25, 2008.

21 In his response on behalf of his committee, Mr. Breazeale states that because he is an
22 airline pilot and U.S. Army Reserve officer, he did not have "the type of clothing required for a
23 Congressional campaign." He further states, "In my judgment, I was authorized to buy clothes
24 for my campaign using campaign funds because it could be argued the clothes would not be for
25 my personal use except as required by the campaign." Response at 1. Nevertheless, after
26 conferring with his treasurer and having the treasurer call the Commission for advice, Mr.
27 Breazeale reimbursed his committee months before the complaint was filed. He attached to the

1 response a copy of his personal check used for this purpose. According to the response, this
2 "was a simple and unintentional mistake" that was "self-disclosed to the FEC [through a phone
3 call requesting advice] when discovered in September 2007." The Breazeale Committee's 2007
4 Amended October Quarterly Report filed on March 26, 2009, disclosed the candidate's
5 reimbursement.

6 2 U.S.C. § 439a(b)(1) states, "A contribution or donation described in sub-section (a)
7 shall not be converted by any person to personal use." Sub-section (a) refers to "[a] contribution
8 accepted by a candidate, and any other donation received by an individual as support for
9 activities of the individual as a holder of Federal office" The statute further states in sub-
10 section (b)(2) that "a contribution or donation shall be considered to be converted to personal use
11 if the contribution or amount is used to fulfill any commitment, obligation, or expense of a
12 person that would exist irrespective of the candidate's election campaign or individual's duties as
13 a holder of Federal office, including . . . (B) a clothing purchase" See also 11 C.F.R.
14 113.1(g)(1)(i)(c) (use of campaign funds for the purchase of clothing, other than items of *de*
15 *minimis* value that are used in the campaign, such as campaign "T-shirts" or caps with campaign
16 slogans, constitutes personal use).

17 Moreover, the Explanation and Justification for the regulation states that all but a *de*
18 *minimis* amount spent on clothing is *per se* personal use, and specifically supersedes Advisory
19 Opinion 1985-22 (Clay), which could be read to allow "specialized attire" to be worn at both
20 social and politically-related functions. Personal Use of Campaign Funds, 60 Fed. Reg. 7861,
21 7864-5 (Feb. 9, 1995). Therefore, the response from the Breazeale Committee indicating that the
22 clothing purchases would exist "irrespective" of the candidate's election campaign does not

1 provide a valid defense under the circumstances presented. See 2 U.S.C. § 439a(b) and 11 C.F.R.
2 § 113.1(g).

3 Mr. Breazeale used campaign funds from his authorized committee for clothing
4 purchases, which were of more than *de minimis* value, in violation of the prohibition on personal
5 use of campaign funds. 2 U.S.C. § 439a(b); 11 C.F.R. § 113.1(g). However, Mr. Breazeale
6 reimbursed the Breazeale Committee before the complaint was filed. Moreover, the alleged
7 amount in violation is so low that it would not merit the further use of Commission resources to
8 pursue this matter. See Statement of Policy Regarding Commission Action in Matters at the
9 Initial Stage in the Enforcement Process, 72 Fed. Reg. 12545, 12545-6 (Mar. 16, 2007).

10 Therefore, the Commission has exercised its prosecutorial discretion and decided to
11 dismiss the complaint and close the file. See *Heckler v. Chaney*, 470 U.S. 821 (1985).

1 **FEDERAL ELECTION COMMISSION**

2
3 **FACTUAL AND LEGAL ANALYSIS**

4
5 **RESPONDENTS:** Andrew MacPherson **MUR: 6140**
6 Barr 2008 Presidential Committee, and
7 David Chastain, in his official
8 capacity as treasurer
9

10 **I. INTRODUCTION**

11 This matter was generated by a complaint filed with the Federal Election Commission
12 ("Commission") by Citizens for Responsibility and Ethics in Washington. See 2 U.S.C.
13 § 437g(a)(1). For the reasons set forth below, the Commission finds no reason to believe that
14 Andrew MacPherson, and the Barr 2008 Presidential Committee, and David Chastain, in his
15 official capacity as treasurer (the "Barr Committee"), violated 2 U.S.C. § 439a(b)(2)(B) and
16 11 C.F.R. § 113.1(g).

17 **II. DISCUSSION**

18 The complaint alleges that on August 12, 2008, the Barr Committee spent \$500 for a
19 "clothing allowance" for the personal use of Andrew MacPherson, a campaign staffer, as
20 reflected in the committee's 2008 September Monthly Report filed on September 19, 2008.

21 In its response, the Barr Committee states the \$500 disbursement was mistakenly called a
22 "clothing allowance" when in fact it was additional compensation for Mr. MacPherson and
23 should have been described as such. The Barr Committee's response included supporting sworn
24 affidavits from both Mr. MacPherson and the committee's treasurer. The Barr Committee further
25 states that it will amend its 2008 September Monthly Report to reflect the correct purpose of the
26 distribution.

1 Therefore, there is no reason to believe that Andrew MacPherson, and the Barr 2008
2 Presidential Committee, and David Chastain, in his official capacity as treasurer, violated
3 2 U.S.C. § 439a(b)(2)(B) and 11 C.F.R. § 113.1(g).

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